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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,179	08/22/2003	Jen-Lin Chao	252011-1270	9085
47390	7590	11/26/2008		
THOMAS, KAYDEN, HORSTEMEYER & RISLEY LLP 600 GALLERIA PARKWAY, 15TH FLOOR ATLANTA, GA 30339			EXAMINER ROBERTSON, DAVID	
			ART UNIT 2121	PAPER NUMBER
			MAIL DATE 11/26/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/646,179

Applicant(s)

CHAO ET AL.

Examiner

Dave Robertson

Art Unit

2121

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 12 September 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 11-15 and 21-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 11-15, 21-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This is a Final office action in response to Applicant's reply of 9/12/2008. Claims 1-5, 11-15, and 21-25 are pending.

Response to Amendment

2. Applicant amends claim 11 to spell out the abbreviation "IC". Accordingly, the objection is withdrawn.
3. Applicant amends claims 1, 11, and 21 to address rejections made under 35 U.S.C. 112, 1st paragraph (written description and enablement). In response to written description of determining risk information, Applicant states that "it is understood that the risk of order is well known in the art of the present application and that persons in the art will realize the meaning of the risk of order and how to determine the risk information based on the demand plans and the purchase orders of each customer" (Amendment, pg. 11). However, while Applicant's description of what was known to one of ordinary skill in the art provides support for determining risk information (assumed known in the art), the rejection as to enablement of how to divide demand into a low risk portion and a high risk portion, a critical aspect of the invention, remains unexplained (see OA of 6/16/08 at paragraph 9, page 4).

As such, the rejection as to written description is withdrawn and the rejection as to enablement is maintained.

4. Applicant cancels claims 6, 16, and 26 to address rejections made under 35 U.S.C. 112, 2nd paragraph. Accordingly, the rejections are withdrawn. Examiner notes

that with the cancellation of claims 6-10, 16-20, and 26-30, all system embodiments of the present invention have been cancelled.

Response to Arguments

5. Applicant's arguments filed 9/12/2008 have been fully considered but they are not persuasive:

Applicant argues claims 1-30 are statutory under 35 U.S.C. 101 because the claims are limited to a practical application in the technological arts. However, this was not the basis of the rejection on non-statutory subject matter. Rather, the rejection was based on Supreme Court precedent, and recent Federal Circuit decisions. For a process to be patentable subject matter under § 101 the process must (1) be tied to another statutory class of invention (such as a particular apparatus) or (2) transform subject matter to a different state or thing. (see rejection under 35 U.S.C. 101 for full explanation).

Applicant's essential argument with respect to obviousness over Hood ("Capacity planning under demand uncertainty for semiconductor manufacturing," May 2003), Milne et al. (US Pat. 5,943,484) and Connors ("Methods for Job Configuration in Semiconductor Manufacturing", 1996), is that the prior art applied is fundamentally different in their manner and purpose for dividing the demand into a low risk part and a high risk part (Remarks, pgs. 14-16) as in Hood, a combination of different types of

products; in Milne, based on the critical level of components; and in Connors, by yield loss risk.

However, as noted below under 35 U.S.C. 112, Applicant has not provided disclosure of how to divide demand into a low risk portion and a high risk portion. Under broadest reasonable interpretation, lacking any defined method for dividing demand into a low risk portion and a high risk portion, the interpretation can be taken that *any method of dividing demand into two portions* would be sufficient to meet the metes and bounds of the claims. Therefore, as Hood, Milne, and Connors each have a method of dividing demand information into two portions, they at least teach a broadest reasonable interpretation of the feature as claimed.

Examiner further notes that under a broadest reasonable interpretation, "risk" is a broad concept encompassing all of the interpretations taught by the prior art of record. Even if, as Applicant asserts, the "risk" in the present invention is "different", it remains a broad concept for reading of the teachings of the prior art for determining patentable distinction.

6. Accordingly, the grounds of rejection over all claims as in the prior office action are maintained.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. Claims 1-5, 11-15, and 21-25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claims 1, 11, and 21 recite a step of dividing demand into a low risk part (portion) and a high risk part. This dividing step is critical to the invention and central to the method of allocating portions of the demand to fabrication. However, nowhere in the specification or claims does Applicant provide disclosure of how this dividing is performed.

As is disclosed in the specification (Table 1 page 6 and page 7, lines 5-8, and page 9 from line 5), risk information is "collected and summarized by analyzing historical information for the demand plans and the purchase orders of each customer." However, "analyzing historical information" does not provide sufficient information for one skilled in the art to determine what portion of demand is low risk and what portion is high risk, nor is there disclosed any external source of the risk information database or any process known to one skilled in the art to determine the dividing of the demand into two portions and assigning a probability according to risk. As such the disclosure fails

to enable the claimed step of dividing demand into a low risk part and a high risk part and providing a database of risk information. These are steps not immediately apparent to one skilled in the art and subject to variation in the myriads of ways in which demand could be divided. Therefore the disclosure fails to comply with the enablement requirement of 35 U.S.C. 112. Claims 2-5, 12-15, and 22-25 depend from claims 1, 11, and 21 and are similarly deficient.

For the purposes of examination, lacking any defined method for dividing demand into a low risk portion and a high risk portion, the interpretation will be taken that *any method of dividing demand into two portions* would be sufficient to meet the metes and bounds of the claims.

Claim Rejections - 35 USC § 101

9. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

10. Claims 1-5, 11-15, and 21-25 are rejected under 35 U.S.C. 101 based on Supreme Court precedent, and recent Federal Circuit decisions. For a process to be patentable subject matter under § 101 the process must (1) be tied to another statutory class of invention (such as a particular apparatus) or (2) transform subject matter to a different state or thing. See *Diamond v. Diehr*, 450 US 175, 184 (1981); *Parker v Flook*, 437 US 584, 588 n9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 US 780, 787-88 (1876). If neither of these requirements is met by the claim, the method is not a patent eligible process. To qualify under § 101 as a statutory

process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

In the present case, none of method (process) claims 1-5, 11-15, and 21-25 recite steps transforming subject matter to a different state or thing, or recite a sufficient tie to another statutory class of invention, such as a particular apparatus. Rather, the claims are directed to calculating a planned allocation of demand based on computed quantities of low and high risk demand. In light of the specification, the claimed step of "dispatching parts..." refers merely to mathematically allocating portions of demand. (The term "part" as used in the claim means "portion of" not "part" as in a physical component of a product.)

Examiner notes that the specification discloses no apparatus, no computer hardware, and therefore no particular apparatus for performing these methods as claimed and none is positively recited in the claims. As such the claims recite process not tied to another statutory class of invention or transforming subject matter to a different state or thing, and are therefore not patent eligible under 35 U.S.C. 101.

Appropriate amendment is required.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 1-5, 11-21, and 21-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hood et al. ("Capacity planning under demand uncertainty for semiconductor manufacturing," May 2003, herein Hood) in view of Milne et al. (US Pat. 5,943,484 herein Milne) and further in view of Connors et al. ("Methods for Job Configuration in Semiconductor Manufacturing", 1996, herein Connors) teaches basic job configuration in semiconductor manufacturing including organizing orders into jobs for dispatching to the fabrication line and optimizing job configuration for variation in yield.

The present invention is a method for dividing forecasted semiconductor product demand into two portions, assigning each portion a probability, and calculating an expected quantity of demand based on the quantity of the first and second portions multiplied, respectively, with the probabilities of the first and second portions.

Hood teaches capacity planning under demand uncertainty for semiconductor manufacturing using stochastic programming to optimize production from demand changes. Milne et al discloses a computer implemented method of allocating semiconductor manufacturing capacity to demand across multiple manufacturing facilities. Connors teaches basic job configuration in semiconductor manufacturing

including organizing orders into jobs for dispatching to the fabrication line and optimizing job configuration for variation in yield.

Claim 1

Hood teaches dividing forecasted demand into multiple demand scenarios representing a quantity of forecasted demand, assigning each demand scenario a probability (see especially page 275, column 1, paragraph 1; Tables I, II, and III and page 277, Section V. "each scenario assigned a probability"), and determining expected quantities of demand using the quantities of the multiple portions and the respective probabilities of the portions (see Appendix, page 279, noting that while Hood teaches a more sophisticated equation encompassing multiple aspects of demand and operational planning for semiconductor production, in *de minimus* (simplification to the aspects contemplated by the present invention), Hood teaches calculating expected demand from at least two portions of demand by multiplying demand by each portions probability).

However, Hood does not expressly teach *dispatching the portions of demand to fabrication* with the portions allocated based on expected demand.

Milne teaches in the art of semiconductor manufacturing the dispatching of portions of forecasted demand across fabrication facilities, where demand is first divided into two or more portions (see Figure 1, MRP, LPMRP, and Non-critical) and allocated according to yield expectations. Connors further teaches determining the volume of jobs to be released into production and that demand allocation is adversely (risk) affected by yield loss in fabrication.

It would have been obvious to one of ordinary skill in the art at the time of the invention to apply the methods of Hood for dispatch of semiconductor production as this would simply have realized the actual production of semiconductor products using old and well known manufacturing process for allocation production of multiple portions of demand using old and well known fabrication allocation methods using improved and thus more accurate demand forecasts based on risk and probabilities attributed to portions of demand.

Claim 2

As above in claim 1, Hood teaches determining expected quantity of demand by multiplying probabilities of demand with the respective portions of demand. The equation $EQ = FQ * FOR + SQ * SOR$ is merely a mathematical statement to this effect.

Claims 3 and 4

Hood in view of Milne and Connor teaches or suggests the demand dispatching method as in claim 1, and in view of Hood teaching *multiple* portions of demand also teaching or suggesting dispatching a *third* quantity of the low risk demand of a second demand dispatched to a second fabrication to the first fabrication if the difference between the expected quantity and the first quantity is exceeding a predetermined ratio of the expected quantity (see page 279 of Hood, A.5 Operation Balance equation and related discussion teaching allocation of demand according to probabilities *balanced* across toolsets (production capacity) such that overall production of demand is optimized for capacity allocation).

Claim 5

Hood in view of Milne and Connor teaches or suggests claim 3; however Hood alone does not expressly teach monitoring the variation of a quantity demand and dispatching a pilot order to fabrication if the variation shows a downward trend.

Connors teaches monitoring the variation (yield loss) of semiconductor wafer manufacturing and adjustments to production to meeting servicing requirements (see page 403 "Yield Models"). It would have been obvious to one of ordinary skill in the art at the time of invention to increase production (i.e. dispatching additional "pilot" orders to fabrication) if the variation in production for a fabrication facility shows a downward trend, as unmet demand would have increased as yield decreased leading to failure to service customer orders at acceptable levels.

Claims 11-15 and 21-25 recite method claims with features substantially as recited for claims 1-5 and are similarly rejected for reasons given above for the respective claim and claim elements.

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dave Robertson whose telephone number is (571)272-8220. The examiner can normally be reached on 8 am to 6 pm, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Albert Decady can be reached on (571) 272-3819. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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